Submission by the
Synod of Victoria and Tasmania
Uniting Church in Australia
To
Inquiry into the Charter of Human Rights and
Responsibilities

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This submission draws on material provided by a number of units within the Synod Victoria and Tasmania, namely the UnitingCare Victoria and Tasmania Unit, the Justice and International Mission Unit and includes material provided by our community services agencies, in particular UnitingCare Community Options and UnitingCare Werribee Support and Housing and previous Synod submissions.
1. BACKGROUND TO UNITINGCARE VICTORIA AND TASMANIA (UCVT)

The Uniting Church in Australia

The Uniting Church in Australia (UCA) is a union of three denominations (Methodist, Presbyterian and Congregational) and was inaugurated in 1977. In the Statement to the Nation offered on UCA’s inauguration, the Church made the following affirmation:

*We affirm our eagerness to uphold basic Christian values and principles, such as the importance of every human being, the need for integrity in public life, the proclamation of truth and justice, the rights for each citizen to participate in decision-making in the community, religious liberty and personal dignity, and a concern for the welfare of the whole human race.*

The Statement also affirmed ‘the rights of all people to equal educational opportunities, adequate health care, freedom of speech, employment or dignity in unemployment if work is not available’. The Statement also committed the Church to ‘work for the eradication of poverty and racism within our society and beyond’ and to ‘oppose all forms of discrimination which infringe basic rights and freedoms’.

Subsequent Assembly and Synod resolutions have built on these foundations and outlined in more detail the link between the Gospel and human rights. The most significant resolution on the Uniting Church’s position on human rights was ‘Dignity in Humanity’ which was passed in 2006. This is attached as Appendix A to this submission. It includes the statement that:

*We urge the Australian Government to fulfil its responsibilities under the human rights covenants, convention and treaties that Australia has ratified or signed by upholding international standards in effecting social and legislative change.*

UCA believes that every individual is equal before God regardless of background. The Church considers the world is a community in which all members are responsible for each other and the strongest have a special responsibility for the vulnerable.

The UnitingCare Victoria and Tasmania Network (UCVT)

UnitingCare is one of the largest providers of community services to the people of Victoria and Tasmania. Our 30 agencies provide essential social services which include services for aged care, children, youth and family support, drug, alcohol and other addiction, disability, employment, gambling, housing and homelessness, indigenous, mental health programs, migrant, asylum seeker and refugee, financial counselling and emergency relief. Services are located across metropolitan Melbourne and in rural Victoria from the west of the state through central and northern Victoria and across Gippsland. We also have services in Hobart, Bridgewater Gagebrook and across Northern Tasmania. Services are provided by around 5000 staff and 7,500 volunteers to over 300,000 people per year.

The UnitingCare Victoria and Tasmania Network (UCVT) is the developing network of UnitingCare agencies and missions within the Synod of Victoria
and Tasmania. It comprises organisations of varying size and complexity located across Victoria and Tasmania.

UCVT’s Statement of Purpose is for the network to be integral to the ministry of the church, sharing in the vision and mission of God – seeking to address injustice, working together to overcome disadvantage and to strengthen communities.

2. INTRODUCTION AND SUMMARY

Introduction

The Synod as a council and governing body of the Uniting Church of the Uniting Church in Australia - Victoria and Tasmania (Synod) welcomes this opportunity to make a submission to the Scrutiny of Acts and Regulations Committee (SARC) inquiry on the Charter of Human Rights and Responsibilities Act 2006 (The Charter). The Synod’s and UCVT’s Mission is based on the protection of human rights, supporting the welfare of all people and overcoming disadvantage. These aims are clearly consistent with the purpose of the Victorian Human Rights Charter. Our agencies work directly within the Victorian community to achieve these objectives, and we believe the Charter plays an important role in supporting our work.

It is of critical importance that the Charter review is not only undertaken within the legal community or the public sector, but includes much broader community perspectives. This should include giving a significant voice to the community sector and its service users – many of whom are disadvantaged and marginalised and therefore most in need of having their basic rights protected.

Summary of Our Submission

In response to the SARC review of the impact of the Charter to date, the Synod’s key points in this submission in relation to each Terms of Reference (ToR) are as follows:

- We consider the Charter to be vitally important over the longer term to enhancing the welfare of all Victorians.

ToR 1

- We therefore request that the Charter include economic, social and cultural rights. It should also be modified to reflect the right to freedom of religion contained in the International Covenant on Civil and Political Rights. The right to freedom of religion needs to be extended to religious communities and cultural rights to Indigenous communities, consistent with UN human rights standards. (see 3.1 below)

ToR 2

- We support the inclusion of the right to self determination in the Charter (see 3.2 below)

ToR 3
- We support the implementation of reporting and auditing frameworks along with ongoing training provided to public authorities and the community sector to ensure understanding of their responsibilities to comply with and use these frameworks (see 3.3 below)

**ToR 4**
- We support the introduction of stand-alone legal remedies for breaches of the Charter to strengthen its impacts (see 3.4 below)

**ToR 5 & 6**
- While we already see enormous potential benefits with the Charter, we believe that five years is not enough time to assess the full impact of the Charter, including the cultural change it is intended to promote under the dialogue model (see 3.5 & 6 below)

**ToR 7**
- We have a number of improvement suggestions for the Charter (see 3.7 below)

3. **SUBMISSION**

In particular, the Synod responds to the review's ToR in detail as follows:

**ToR 1 - Whether the Charter should include additional human rights, including but not limited to, rights under the —**

(a) *International Covenant on Economic, Social and Cultural Rights*;  
(b) *Convention on the Rights of the Child*; and  
(c) *Convention on the Elimination of All Forms of Discrimination against Women*?

Human rights are an expression of the basic ethical standards that governments and the broader community should adhere to. The community sector continues to observe serious breaches of human rights in Victoria, including in key social service areas such as education, health care, food, housing and clothing.

The Charter has been an important first step towards better protection and promotion of human rights in Victoria. However, our view is that it should be broadened to include the full rights recognised by key international law covenants including those listed at 3.1(a) to (c) above, as well as:

- *International Covenant on Civil and Political Rights* (ICCPR);  
- *International Convention on the Elimination of All Forms of Racial Discrimination*;  
- UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;  
- UN Convention on the Rights of Persons with Disabilities.

For example, we note the South African Bill of Rights include economic and social rights. We also note that unlike the Charter, Article 4 of the ICCPR
requires that there be no derogation from certain human rights (including Article 18, the right to life (Art 6), the right not to be tortured (Art 7) etc., Section 7(2) of the Charter therefore takes a more restrictive approach to protecting these rights and places Victoria at odds with its obligations under the International Covenant.

As a minimum, if Victoria is to truly address poverty and disadvantage, it would be significantly aided by the Charter’s clear protection of rights to adequate standards of education, health care, food, housing and clothing as well as to social security. Already, we understand that the implications of the Charter have been considered in about 100 cases (of which 15% relating to housing/homelessness, 10% mental health and 20% to access to justice issues). At present however, individuals are only indirectly protected from eviction into homelessness through the right to privacy (s 13) which creates positive obligations on public authorities to protect individuals and families from interference into their privacy.

**UnitingCare Werrabee Support and Housing Example**

Last year UnitingCare Werrabee Support and Housing supported a young person experiencing homelessness. Unfortunately, gaps and inflexibilities in some services may have contributed to him taking his own life. These issues may have been prevented if the Charter is strengthened to explicitly protect broader economic and social rights. This is his story:

‘Jake’ was feeling isolated, homeless and sad when he came to UnitingCare’s Werrabee service looking for somewhere to stay. He told us he’d been to other local services and the hospital but that no one had been able to help him. The service was full when he arrived, but was able to allocate him a worker given Jake’s high level of risk and vulnerability.

As a consequence of being without fixed address, Jake’s Centrelink benefit was cut. He reported that no one at Centrelink had informed him that there were ways to address these issues, such as giving UnitingCare’s address for him to collect his mail. Further to this, Centrelink appears to have made no assessment of Jake’s capacity to work despite his mental health issues.

Jake’s life circumstances and his presentation told us that he was a vulnerable young man who required immediate interventions and support. While we tried to address his issues urgently, broader structural inadequacies meant that it was probably too late. A thorough assessment and service response might have identified that Jake was better suited to a comprehensive program that would attempt to address the complex issues he had faced over his short life, including the recognition that he was unable to search for work without a stable home base and adequate support.

Should economic, social or cultural rights be included in the Charter, there would be even greater potential for redress for Victoria’s most vulnerable to access this basic level of support.

This tragic story underlines the principle that economic, social and cultural rights are inextricably interwoven with civil and political rights, as they guarantee minimum conditions within which individuals can actually exercise their civil and political rights. For example, it would be near impossible for a

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2. In addition, the right to protection from cruel, inhuman or degrading treatment, the right to protection of families and children, and right to life (in some extreme circumstances) guarantee some form of protection to people in Victoria.
3. A longer article on Jake’s (name changed) story was published in Parity, Vol. 23, No. 3, 2010: 16-17.
homeless person with educational disadvantages experiencing drug addiction to exercise their right to vote if there was not some level of access to support services like emergency relief, housing support and access to information.

**UnitingCare Community Options Example**

UnitingCare agencies like UnitingCare Community Options face issues of achieving adequate housing, health and educational opportunities for all people in Victoria. Particular issues of concern for UnitingCare Community Options include:

- Rights of people who are ageing or with a disability to have access to housing appropriate to their needs, family and financial situation;
- Rights of people experiencing illness due to ageing or disability to be provided with appropriate, timely, and effective health and rehabilitation services;
- Rights of children with a disability to be offered appropriate opportunities for education which will provide them with the same future opportunities as any other Victorian child.

Under the current Charter, these vulnerable groups may potentially seek redress in relation to rights such as right to life, the protection of families and children, or protection from torture and cruel, inhuman or degrading treatment. While these are relevant rights in the circumstances, economic and social rights are far more central to these issues and would enable the remedies to be more meaningful, as well as encouraging better practice across the ageing and disability sectors.

**UnitingCare Community Options Case scenario**

The following scenario provides an illustration of the potential benefits in expanding the Charter and was raised during Charter training with staff:

A service user of community aged care services resides in an Office of Housing property which is located at the bottom of a large hill. Due to her limited mobility and frailty she is unable to drive, and unable to walk up the hill to the local shops, bus stop and community facilities. Despite raising this with the Office of Housing she was informed that no changes to her tenancy arrangements could be made.

The Charter can assist this service user to assert her right to freedom of movement, and potentially her right to protection from inhumane treatment. If the Charter were to include social/economic rights to e.g. an adequate standard of housing, this could be of immense benefit to the service user in allowing her issues to be addressed at the earliest stage possible (avoiding the situation where a property is inappropriately allocated in the first place).

While the outcomes mentioned as possibilities within were not achieved (due to these being past situations) they highlight the sorts of benefits that can be achieved if staff are appropriately trained and supported (to avoid policies which don’t take into account individuals’ circumstances and their rights). If the Charter were broadened, it would also provide added incentive for staff to search out more appropriate housing or at least make alternative arrangements (e.g. a support worker or appropriate taxi to access essential infrastructure).

**Enhancing the Right to Freedom of Religion**

Further, the Synod supports the submission by the Victorian Council of Churches in urging that the right to freedom of religion should be directly aligned with Article 18 ICCPR as follows:
1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

In particular, Article 18(4) is currently not reflected in the Charter (relating to respecting the rights of parents/guardians in relation to religious instruction of their children). The Synod sees this as an integral part of the right to freedom of religion and should be incorporated into the Charter. While this is not an unfettered right, it however requires the Victorian Government to respect the wishes of parents/guardians when providing any moral or religious education.

**Extending this right to religious communities**

The Synod believes that restricting the rights of the Charter only to individuals and not to communities seriously restricts freedom of religion and the right to culture. Thus the Synod strongly opposes the current section 6(1) of the Charter and believes that it compromises Australia’s human rights obligations under international law. While the Synod supports the position that the Charter should not extend human rights to for-profit corporations, denying the right to freedom of religion and the right to culture to communities has adverse impacts for the protection of these rights in Victoria.

An individuals-only based interpretation of the right to freedom of religion led the Victorian Law Reform Commission (VLRC) to recently argue that organisations should not be permitted to have a right to freedom of conscience under law, with no exemption. In their view:  

"...8.32 As freedom of conscience is generally understood to be held by individuals, the conscience provision should not extend to corporations. This is consistent with existing conscience provisions in other Victorian laws.

8.33 The danger in extending the provision to institutions is that it may establish a precedent of corporations holding interests that could be categorised as human rights. This could lead to perverse outcomes...."

This position was repeated in another section of the VLRC report which argued that Catholic organisations should be denied a right to conscientious objection on the grounds that “human rights are generally regarded as

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residing in individuals rather than organisations. In asking for clarification of this position, the Synod was informed:

"...This is not a specific position or stance of the VLRC, but a restatement of principles of human rights law which is supported by the article referred to in the Report (Cook and Dickens Human Rights Quarterly at footnote 18). The human rights principle that rights reside only in individuals, not organisations, is also expressly indicated in the Victorian Charter (Charter of Human Rights and Responsibilities Act) which expressly states that the rights enshrined in the Charter only apply to 'persons' (see Section 6 'Application')."

The Synod believes such views are at odds with the UN High Commissioner for Human Rights which stated in General Comment 22 of 1993 on Article 18 ICCPR that:

"The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others....

The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason....

In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications...."

The ability to choose leaders, clergy and teachers and the right to establish places of religious teaching and to prepare and distribute religious texts are activities overwhelming done by communities. It is clear that the UN High Commissioner intends to extend the right to freedom of religion to religious communities.

Further, despite section 5 of the Charter recognising that it does not limit the rights or freedoms recognised in other laws, the Synod argues that the VLRC is doing exactly that in relation to international obligations relating to freedom of religion.

In raising this matter with the then Attorney General, The Hon. Rob Hulls MP, his response to the Victorian Council of Churches stated:

"However, the Charter makes clear that the beneficiaries of the rights in the Charter, that is, the rights-holders, are individuals only. Section 6 states that only persons have human rights. This is to be read in conjunction with section 3 which defines 'person' to mean a natural person. The Explanatory Memorandum which accompanied the Charter states that the clause 'clarifies that the Charter does not confer any rights on other legal entities apart from individuals.' The note

6 E-mail from the Victorian Law Reform Commission, 3 November 2008.
7 Letter from The Hon Rob Hulls, MP to Rev Jason Kiaa, President of the Victorian Council of Churches, 9 March 2010.
accompanying section 6 makes clear that corporations do not have human rights under the Charter.

As the Explanatory Memorandum makes clear, the fact that rights are held by individuals does not preclude a group of community of individuals from making an application to a court or tribunal in respect to a question relating to rights protected by the Charter. The Charter has no effect on whether that group or community has a cause of action or otherwise has standing before the court or tribunal.

The Charter also provides an exception in some circumstances from the obligations that religious bodies may otherwise have as public authorities. Section 38(4) provides that the obligation on public authorities does not require a public authority to 'act in a way, or make a decision, that has the effect of impeding or preventing a religious body (including itself in the case of a public authority that is a religious body) from acting in conformity with the religious doctrines, beliefs or principles in accordance with which the religious body operates.' This exception may indirectly protect the right to freedom of religion of persons within or working for religious bodies however it is not intended to, nor does it confer Charter rights on those religious bodies, rather, it exempts them from obligations.

Limiting the right to freedom of religion solely to individuals means that the State can argue that suppressing the right of religious organisations is not a human rights violation, as argued by the VLRC in its consideration of abortion laws. It also raises questions about the State's ability to suppress the right of religious communities to establish places of worship, schools, require employees to work within the ethos of the religious community or organisation without these being recognised as human rights violations.

One of the strongest reasons why religious organisations are often ambivalent about human rights discourse is a concern that they champion the rights of individuals over the communities. However, it is almost certain that the drafters of the UN Universal Declaration of Human Rights (and the French Declaration of the Rights of Man and Citizen from which the UN Declaration draws) did not intend the documenting of human rights to extinguish the rights of communities. In fact Article 29(1) of the UN Declaration states:

"Everyone has duties to the community in which alone the free and full development of his personality is possible"

Further Article 8 of the International Covenant on Economic, Social and Cultural Rights grants specific rights to trade unions as bodies, not exclusively to the individuals that make them up. There will be greater community acceptance of the Charter if it acknowledges that human rights extend to both individuals and communities (without being claimed by for-profit corporations).

The Federal Human Rights and Equal Opportunity Commission (HREOC) recommended in their Article 18: Freedom of Religion and Belief report that legislation should be introduced at the Federal level to "affirm the right for all religions and organised beliefs as defined to exist and to organise and determine their own affairs within the law and according to their tenets." It would appear that HREOC agreed that freedom of religion extended to religious bodies, communities and organisations and not just individuals.
The Synod believes that the Charter should explicitly recognise the right to freedom of religion to communities and religious bodies, as well as to individuals. Such a right should apply to a ‘religious body’ as defined under section 38(5) of the Charter. This would avoid the risk of for-profit corporations claiming human rights, without abrogating Victoria’s obligations under UN treaties.

**Extending cultural rights to indigenous communities**

Section 19 of the Charter protects the cultural rights of Aboriginal persons to enjoy their identity, culture, language, kinship ties and relationship with the land and other resources.

As with the right to freedom of religion, the interpretation of the right to cultural rights as only applying to individuals is an abrogation of the rights as recognised by the UN, including through the comments of the UN Economic and Social Council, and within the **UN Declaration on the Rights of Indigenous Peoples** itself. **Appendix B** outlines how the UN human rights system has recognized the collective rights of Indigenous people.

The Synod therefore believes it is crucial for the Charter to fully recognise the freedom of religion, the human rights of religious communities, and the collective rights of Indigenous peoples, for the reasons outlined above.

**ToR 2 - Whether the right to self-determination should be included in the Charter?**

In March 2008, the UCA resolved to support a national human rights charter or Act for Australia, including the right to self-determination. This is based on the need to ‘take account of Indigenous Australians as the first peoples of this land and the long history of rights being denied to them’.

This position follows from the Church’s special commitment to this issue by entering into a formal covenant with its Indigenous members, recognising and repenting for the Church’s complicity in the injustices perpetrated on Australia’s Indigenous community, and pledging to move forward with a shared future. The statement to the Uniting Aboriginal and Islander Christian Congress affirms:

> It is our desire to work in solidarity with the Uniting Aboriginal and Islander Christian Congress for the advancement of God’s kingdom of justice and righteousness in this land ... We want to bring discrimination to an end, so that your people are no longer gaolcd in disproportionate numbers, and so that equal housing, health, education and employment opportunities are available for your people as for ours. To that end we commit ourselves to work with you towards national and state policy changes. We commit ourselves to build understanding between your people and ours in every locality, and to build relationships which respect the right of your people to self determination in the church and in the wider society.\(^6\)

The Synod therefore supports including the right to self-determination into the Charter. We believe recognising such a right in legislation would go a long way to further promote a culture of empowerment and capability-building which will benefit Victoria’s most vulnerable. This will improve the practice of policy-makers, government departments through to service providers who may be public authorities. This would also reinforce the value of the work many community services are currently undertaking in regards to self-direction, encouraging others to embrace this approach and implement principles of self-direction throughout the organisation’s service models, policies and practice.

ToR 3 - Whether there should be mandatory regular auditing of public authorities to assess compliance with human rights?

Many social service providers delivering services on behalf of the State are considered ‘public authorities’ under the Charter and must act with compatibility with human rights and give proper consideration to human rights in decision making processes, including in their dealings with service users.

Numerous organisations that UnitingCare agencies are working with may also be considered public authorities including government departments (e.g. Department of Human Services), local councils, other not for profit organisations, and direct service providers. Many of our agencies also engage to some extent with the education sector (including schools), community health organisations and aged care organisations like nursing homes.

Our experience within the UCVT Network and in working with other organisations is that the level of awareness, understanding and comprehension of the Charter remains relatively low. Many staff feel poorly equipped to understand the implications and are yet to realise the significant opportunities created by the Charter. This relates to both:

- Our potential responsibilities if considered a ‘public authority’ under the Charter when providing social services and its implications for the way UnitingCare services should be delivered;
- How we can work together with government and other public authorities to apply the Charter to improve outcomes for our service users.

In this regard, reporting and auditing frameworks would create the additional incentives for public authorities to seek to understand their responsibilities, provide a point for further information and clarification of obligations, and lead
to a more effective integration of the Charter into organisational policies, processes and practices.

In addition, while significant resources were devoted to awareness raising, information and training when the Charter was first implemented, our experience confirm that further and ongoing information/training is needed to ensure cultural change is achieved. The Victorian Government should continue to provide the necessary expertise and capability-building to support not for profit organisations to understand their obligations, and realise the opportunities of the Charter to achieve better outcomes for their service users.

ToR 4 - Whether the Charter should include further provisions with respect to legal proceedings that may be brought or remedies that may be awarded in relation to acts or decisions of public authorities made unlawful by the Charter?

As far as we are aware the direct experience of our organisations with the Charter has not involved legal proceedings. In the vast majority of cases, we consider that issues can be resolved through the dialogue model by constructively working with public authorities and engaging in a discourse to clarify their human rights obligations as a shared responsibility.

However, the Synod does see clear and direct benefits for our service users if legal proceedings may be brought on the acts and decisions of public authorities. This would avoid the situation where a clear breach of the human rights of a service user has occurred but he/she has no appropriate recourse given there is no other instance of illegality involved. Further, while issues are only likely to be resolved through legal proceedings in the minority of cases, the fact that such actions may be possible may go a further way to promote a rights-based culture.

**UnitingCare Community Options Example**

In the experience of UnitingCare Community Options, there have been a number of observed situations of human rights breaches which staff wished to raise on behalf of service users and program participants. However, further investigation found that there was no appropriate legal or procedural mechanism in which to do so.

ToR 5 - What have been the effects of the Charter Act on...

(c) the provision of services, and the performance of other functions, by public authorities

The Synod considers it is premature to assess the full effects of the Charter. In any case, we are at least not aware of any negative impact of the Charter after its first phase of implementation on the provision of services and decision making of public authorities. This may be due to the fact that the Charter emphasises a reasoned and moderate approach to rights protection (e.g. providing that human rights be exercised in way that respects the human rights of others). Section 7 also clearly allows human rights to be subject to 'such reasonable limits' as justified in a free and democratic society, including by taking into account of the nature and purpose of the limitation, proportionate to the nature and impairment of the right.
In our experience, the effects of the Charter focus on greater awareness of human rights compliance within the public sector and by other public authorities. We believe however, that more time is needed for further implementation and improved outcomes. For example, while the first set of decisions protecting Charter rights have already made some gains for the most marginalised and disadvantaged, we look forward to reinforcement and improvements in the Charter to realise its full potential. We believe it is important the Charter is not compromised before enough time has passed to see the true magnitude of its impact. To abandon the Charter at this point in time would be premature and undermine realising the benefits of this instrument for Victorians. For example, we understand that the Department of Human Services are currently considering new guidelines and policies to integrate human rights principles that consider people’s rights to fair standards of services, e.g. community housing standards.

This accords with the Victorian Equal Opportunity and Human Rights Commission’s (VEOHRRC’s) assessment of the impact of the Charter which found that community organisations and members reported the Charter resulted in positive outcomes that included changes to the enforced treatment of people with mental disabilities and instances where public authorities had been prevented from evicting people into homelessness.9

**UnitingCare Community Options Example**

As mentioned in our answer to ToR 3, we consider the Charter would be more effectual if further information and training to the community sector is provided. For example, UnitingCare Community Options had at the initial implementation of the Charter, undertaken to train its own staff in using the Charter and raise awareness and understanding. However, it found this process to be slow, resource-intensive and not linear. Despite this, responses to date from staff that have undergone training suggest that the Charter has been received positively, and staff have been encouraged by the way it may benefit community organisations do their work.

**UnitingCare Community Options Case scenario**

The following scenario provides an illustration of the potential benefits of placing explicit obligations on all public authorities to consider and comply with human rights.

Staff members have performed some recent home visits to a disability service user with limited mobility and vision. On visiting the home they have noted a number of items on the floor such as books, shoes and boxes which have the potential to cause significant harm to the service user if they tripped over them. The service user receives personal care services, including domestic cleaning, and on enquiring as to why these items were left lying on the floor and endangering the service user, the staff member was informed that due to the Occupational Health and Safety requirements, workers performing domestic cleaning were directed not to pick up items off the floor.

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While appreciating the need for worker safety, this position places the service user at risk of suffering severe injury, thus in breach of his right to security of person, as well as freedom of movement in one’s own property.

If the Charter were to be used to foster discussions with the provider that improve organisational policies and guidelines, service standards and direct service provision, this could significantly improve the welfare of the disadvantaged in our community who are highly dependent on public support and assistance in their daily lives.

**ToR 5 - What have been the effects of the Charter Act on...**

*e) the availability to Victorians of accessible, just and timely remedies for infringements of rights?*

As stated in 3.4, the Synod believes that there should be a ‘free standing right’ to remedies for infringements of human rights as a last resort if the dialogue model fails to achieve improvement. However, the focus of this section should be on ensuring that low-cost, accessible, timely and appropriate forums for redress are available to all.

**UnitingCare Community Options Example**

This view is supported by UnitingCare Community Options who report that the greatest use of the Charter for service users has been through non-legal remedies or administrative mechanisms. By reminding public authorities of their obligations under the Act and collaboratively working, the agency is enabled to use, create and pioneer constructive, cost-effective means of upholding an individual’s rights. In most instances individual advocates and community agencies acting on behalf of their service users would not seek legal proceedings, both due to issues related to costs and also due to the fact that many service users would not want to pursue such mechanisms.

**ToR 6 - What if any, have been the overall benefits and costs of the Charter?**

The Synod considers the Charter to be beneficial for our constituency and supports that the Charter requires all arms of the Victorian government (parliament, government, courts) to consider human rights as part of their decision-making. We believe that the five years since enactment has had a positive result in creating beneficial and worthwhile outcomes in the operations of public authorities. The Charter obligations constitute a minimum benchmark for protecting and improving individual rights, including for those who are most disadvantaged.

However, five years is clearly too short a time for the longer term cultural change envisaged by the Charter to occur. Public authorities and the wider community would benefit from a further reinforcement of the Charter in the next phase to build upon these beginnings before the value of the Charter can be fairly assessed. In particular, if further changes in policies, processes and practices were to occur (especially if supported by auditing functions as argued above), then this would be a good indication of an effective and ongoing commitment to human rights.
Despite this, it is promising that VEOHRC in their 2010 review of the Charter concluded: "the information provided by public authorities to the Commission in 2010 indicates there is a cultural change taking place within government and that, for many agencies, taking human rights considerations into account in their work is becoming business as usual…. We are seeing increasing sophistication in the use and application of the Charter. Some public authorities are moving from training and reporting on the Charter to enhance their business planning and decision-making processes, to raise service standards and to foster greater accountability. As a result, public authorities are achieving fairer, more inclusive and better services for all Victorians."\(^{10}\)

VEOHRC reported direct benefits such as the case in which a woman with a disability was unable to leave her home without a ramp being constructed. Use of the Charter persuaded a local authority to reverse a decision not to provide the woman with a ramp.\(^{11}\) In another case a man experiencing depression after the death of his mother was able to move into a one bedroom unit under the control of the Office of Housing after using the Charter, instead of being left homeless.\(^{12}\)

Finally, the Synod notes this same report found that the Charter’s impact across government and local government has been inconsistent.\(^{13}\) VEOHRC also found examples of policy and legislation carefully drafted to comply with human rights obligations faltering at the point of its translation into practical implementation and service delivery. Without the Charter and the Commission’s oversight of the implementation of the Charter, such approaches taken by the Victorian Government would be more likely to go undetected and unaddressed.

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**UnitingCare Community Options Case scenario**

The following scenario provides an illustration of the potential benefits of how basic rights like the right to privacy and protection of families may be used to strengthen the interest, dignity and respect of vulnerable community members:

An aged couple, currently receiving community aged care packages are no longer able to stay in their own home, due to the increasing care needs of the husband, while the wife remains relatively independent. On enquiring with their chosen aged care facility (desired because of its location and proximity to familiar amenities, family and friend networks) they are informed that they will be unable to share a room due to their differing care needs (although they are willing to cover the difference in cost between low care and high care for the wife’s accommodation). The facility’s policies and processes also provide that rooms are singles only for the ease of staff and current infrastructure, room layout, etc. They have therefore only been offered adjoining rooms.

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\(^{11}\) ibid, p. 21.

\(^{12}\) ibid, p. 23.

\(^{13}\) ibid, p. 2.
Having been married for 60+ years they are distressed at the thought of having to live and sleep separately for their remaining years.

The beneficial effects of the Charter may be such that this policy may be understood as a contravention of the right to privacy, and in the protection of families and children. The aged care facility can be informed of their obligations under the Charter and reminded that having blanket policies do not absolve them of their responsibility to attempt to meet this couple’s human rights needs. The facility can address this by modifying policies to allow couples to share rooms, developing new practices which can adapt to these new arrangements and assist by purchasing more appropriate furniture and infrastructure.

**ToR 7 - What options are there for reform or improvement of the regime for protecting and upholding rights and responsibilities in Victoria?**

The Synod welcomes any initiatives to further improve the Charter to achieve improved outcomes for all people in Victoria. Our suggestions include:

- **Recognise rights, dignity and respect for all people in Victoria:** In its preamble, the Charter recognises that ‘human rights belong to all people’. This could be clarified and substantiated emphasising that the Charters human rights protection principles apply to all persons living in Victoria regardless their visa, residency or citizenship status.

- **Improved quality of decision-making by public authorities:** The judiciary system should also be explicitly compelled, as much as government and other public authorities, to take into account human rights and life circumstances of an applicant in their decision making e.g. when making a decision about whether a particular social group or individual should be granted emergency relief support. This could lead to fairer outcomes for the most marginalised community members that rely most on the protection of their rights.

- **Encourage and reward a culture of human rights best practice:** The community sector should be encouraged and rewarded to recognise rights and empower their service users. Many community organisations would need to be adequately funded and supported to establish service models and human rights frameworks that deliver best practice outcomes in service delivery, case work and individual advocacy. Importantly, systemic improvement of organisational policies, procedures and practices should be monitored to ensure that individual circumstances of people seeking support are improved.

- **Support cultural change through more training and greater resourcing:** As mentioned, community organisations should be also supported in their wider training and awareness raising work to empower their staff and service users and to equip them with the appropriate knowledge to best promote human rights.
4. CONCLUSION

Rather than any suggestion that the Charter should be limited or even repealed, the Synod considers that the Charter plays a vitally important role in the Victorian community. This is because without the Charter, several basic and important rights, such as the special protection of families and children, seem to have no other legal protection in Australia.

The Synod agrees with the strong theme that emerged from the VEOHRC’s report supporting the Charter, including that there is a “need to more effectively, more widely and more urgently engage the community on the Charter if broad-based cultural change is to occur.”

In summary, and as can be seen in our submission above, we consider the last five years have achieved significant gains for human rights and brought Victoria into line with at least part of international human rights law. The Synod looks forward to realising how the Charter can work for those who are most vulnerable and disadvantaged in our communities.

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Appendix A

Dignity in Humanity: Recognising Christ in Every Person

A UNITING CHURCH IN AUSTRALIA STATEMENT ON HUMAN RIGHTS

1. The Uniting Church in Australia believes that human beings are created in the image of God who is three persons in open, joyful interaction. The image of God that is reflected in human life, the form of life that corresponds to God, is the human community—all people—finding its life and sustenance in relationship.

2. Thus, the Uniting Church believes that every person is precious and entitled to live with dignity because they are God’s children, and that each person’s life and rights need to be protected or the human community (and its reflection of God) and all people are diminished.

3. In Jesus Christ we discern that which is truly human. As we feed the hungry, welcome the stranger and care for the thirsty, the sick and the imprisoned, there is the mysterious possibility that we will discover the life of Christ among us (Matthew 25: 31-46), and share the love of God.

4. We believe that God has given humanity gifts and skills for the benefit of the earth and humanity itself. These gifts include the capacity for love, compassion, wisdom, generosity and moral choice. They come with the responsibility to ensure the health and wellbeing of present and future generations and the earth. The well-being of the earth is crucial to the possibility of human community and well-being. Social, political and economic arrangements should reflect the dignity and worth of human beings and respect for the planet. Through the prophets and the life and words of Jesus, God calls people to work for justice for the poor and vulnerable.

5. We believe that Christians are called to love their neighbour as they love themselves and to extend that love even to enemies. It is the love of God in Christ Jesus which motivates us to live our calling by working for peace with justice in our church, our communities and the world. The recognition of human rights is an affirmation of the dignity of all people and essential for achieving peace with justice.

6. We affirm the inherent and inalienable right of all people to live free of persecution and violence, with access to all that is necessary for a decent life.

7. We remember the commitments made in our Statement to the Nation, at the Uniting Church’s inception in 1977:

   We affirm our eagerness to uphold basic Christian values and principles, such as the importance of every human being, the need for integrity in public life, the proclamation of truth and justice, the rights for each citizen to participate in decision-making in the community, religious liberty and personal dignity, and a commitment to the welfare of the whole human race.

8. We reaffirm the Statement on the Rights of Nature and of Future Generations (1991) in which the Uniting Church National Assembly acknowledged “the inalienable dignity of all humans”, and called for “the recognition and guarantee of human rights around the world”.

9. We name the broken nature of the world. It is flawed and vulnerable to unjust structures and the practice of evil.

10. We confess that throughout its history the Church has perpetrated violence and abused human rights through action, inaction, complicity and collusion and that we have often used the Bible to justify such violence. We repent of our sin.
and commit ourselves to work for reconciliation and justice as we continue to understand our own brokenness.

11. We condemn the abuse of human rights and the failure to uphold and promote human rights as contrary to the gospel of God’s love in Christ for all human beings and the earth.

12. We affirm our support for the human rights standards recognised by the United Nations (UN). Everyone has a birthright to all that is necessary for a decent life and to the hope of a peaceful future. This birthright is expressed in UN human rights instruments which describe human rights as civil, political, economic, social and cultural rights. These instruments provide a valuable framework for assessing political, economic and social systems and are an important tool for peace.

13. We note that the internationally recognised human rights are indivisible, universal and inalienable:

   a. No rights are possible without all that is necessary for a decent life, including the rights to work with just pay and conditions, adequate food and health care, adequate, appropriate and accessible housing and a safe environment, education for the full development of the human potential and the right of people to participate fully in decision-making about their common future. Civil and political rights cannot be separated from economic, social and cultural rights.

   b. It is the duty of all States, regardless of their cultural, economic or political systems, to promote and protect human rights and “eliminate all violations of human rights and their causes, as well as obstacles to the enjoyment of these rights”.

   c. It is “the right and duty of the international community to hold all state and non-state actors accountable for violations of human rights which occur in their jurisdiction or control, or for which they are directly responsible”.

   d. In the exercise of a person’s rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of human dignity and the general welfare of a democratic society.

14. We support the commitment of the Eighth Assembly of World Council Churches to promote and defend human rights in a way which takes into account:

   a. “the values and insights into human rights and dignity derived from the rich heritage of peoples’ religions, cultures and traditions”;

   b. “the rights of peoples, nations, communities and their cultures as well as the rights of each individual within them”;

   c. “the equal rights of young and old, of women and men, and of all persons irrespective of their origin or condition”.

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17 Together on the Way, WCC, para. 3.9
18 based on Article 29(b), Universal Declaration of Human Rights
15. We encourage all governments to fulfil their responsibilities as members of the United Nations, recognising it as the peak forum for discourse between nations, and upholding their commitment to the UN's Charter and to UN treaties that serve the forging of peaceful and non-exploitative international relations. Peace is served by UN member States acting towards one another and the UN in good faith.

16. We heed the call of the World Council of Churches' Central Committee in 1995, for all churches to:

- be alert to the activities and policies of their respective governments with a view to strengthening the capacity of the UN in areas such as the promotion and protection of human rights, the struggle against racism, the enhancement of the rights of women, aid to and protection of refugees and migrants, the effective international control of production and transfer of armaments, the elimination of nuclear weapons, protection of the global environment, and the realization of a just and equitable international economic order.

17. We urge the Australian Government to fulfil its responsibilities under the human rights covenants, conventions and treaties that Australia has ratified or signed, by upholding international standards in effecting social and legislative change.

18. We pledge to assess current and future national public policy and practice against international human rights instruments, keeping in mind Christ's call and example to work for justice for the oppressed and vulnerable.

19. We declare our opposition to capital punishment and commit ourselves to stand against the death penalty wherever it exists, regarding it as a cruel and inhuman punishment which denies the ability of an offender to reform.

20. We urge the Australian Government to develop and promote human rights education which, consistent with the recommendations of the 1993 Vienna World Conference on Human Rights, includes peace, democracy, development and social justice, and aims to foster mutual understanding, healthy and harmonious communities, and justice and peace.

21. We commit the Uniting Church National Assembly to promote an increased awareness and understanding of human rights through our education, justice and mission programs and to stand in solidarity with our partner churches as they advocate and work for human rights in their countries.

22. We encourage all members, groups, congregations and agencies of the Uniting Church to model respect for human rights in their daily lives and to advocate for policies consistent with human rights standards and against violations of human rights in all forms, both within Australia and internationally.

23. We encourage the councils of the Uniting Church to model respect for human rights in their work and mission, including working towards an end to manifestations of greed, corruption, violence, persecution and exclusion.
Appendix B

Arguments in favour of extending cultural rights to Indigenous communities

In its General Comment No 21 of the UN Economic and Social Council of 21 December 2009 stated (emphasis added):

“7. The decision by a person whether or not to exercise the right to take part in cultural life individually, or in association with others, is a cultural choice and, as such, is a cultural choice and, as such, should be recognized, respected and protected on the basis of equality. This is especially important for all indigenous peoples, who have the right to the full enjoyment as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law, as well as the United Nations Declaration on the Rights of Indigenous Peoples....

9. In its general comment No 17 on the right to benefit from the protection of moral and material interests resulting from any scientific, literary or artistic production of which one is the author, the Committee recognizes that the term “everyone” in the first line of article 15 may denote the individual or the collective; in other words, cultural rights may be exercised by a person (a) as an individual, (b) in association with others, or (c) within a community or group, as such.

15. (a) Participation covers in particular the right of everyone – alone, or in association with others or as a community – to act freely, to choose his or her own identity, to identify or not with one or several communities or to change that choice, to take part in the political life of society, to engage in one’s own cultural practices and to express oneself in the language of one’s choice....

(b) Access covers in particular the right of everyone – alone, in association with others or as a community – to know and understand his or her own culture and that of others through education and information, and to receive quality education and training with due regard for cultural identity....

16(b) Accessibility consists of effective and concrete opportunities for individuals and communities to enjoy culture fully, within physical and financial reach for all in both urban and rural areas, without discrimination....

(c) Acceptability entails that the laws, policies, strategies, programmes and measures adopted by the State party for the enjoyment of cultural rights should be formulated and implemented in such a way as to be acceptable to the individuals and communities involved. In this regard, consultations should be held with the individuals and communities concerned in order
to ensure that the measures to protect cultural diversity are acceptable to them.

(d) Adaptability refers to the flexibility and relevance of strategies, policies, programmes and measures adopted by the State party in any area of cultural life, which must be respectful of the cultural diversity of individuals and communities.

(e) Appropriateness refers to the realization of a specific human right in a way that is pertinent and suitable to a given cultural modality or context, that is, respectful of the culture and cultural rights of individuals and communities, including minorities and indigenous people.

49. The obligation to respect includes the adoption of specific measures aimed at achieving respect for the right of everyone, individually or in association with others or within a community or group.

50. (b).... Respect and protect cultural heritage of all groups and communities, in particular the most disadvantaged and marginalized individuals and groups, in economic development and environmental policies and programmes....

The UN Economic and Social Council have been even more explicit about the collective rights of Indigenous communities within General comment No. 21:

"36. States parties should take measures to guarantee that the exercise of the right to take part in cultural life takes due account of the values of cultural life, which may be strongly communal or which can only be expressed and enjoyed as a community by indigenous peoples. The strong communal dimension of indigenous peoples’ cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired....

37. Indigenous peoples have the right to act collectively to ensure respect for their right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literature, designs, sports and traditional games, and visual and performing arts. States parties should respect the principle of free, prior and informed consent of indigenous peoples in all matters covered by their specific rights...."

The Council is specific in its view that State parties are obliged to legislate to protect the right to culture of communities as well as individuals (emphasis added):

"54. The obligation to fulfill requires that States parties must provide all that is necessary for fulfillment of the right to take part in cultural life when individuals or communities are unable, for reasons outside their control, to realize this right for themselves with the means at their disposal. This level of obligation includes, for example:
(a) The enactment of appropriate legislation and the establishment of effective mechanisms allowing persons, individually, in association with others, or within a community or group, to participate effectively in decision-making processes, to claim protection of their right to take part in cultural life, and to claim and receive compensation if their rights have been violated..."

Further, the UN Declaration on the Rights of Indigenous Peoples states:

"...Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples (Preamble)...

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law (Article 1)..."

A number of rights within this Declaration also refer specifically to collective rights of Indigenous peoples, including:

- The right to establish and control educational systems (Article 14).
- The right to establish their own media in their own languages (Article 16).
- The right to maintain and develop political, economic and social systems and institutions (Article 20).
- The right to determine the structures and to select the membership of their institutions in accordance with their own procedures (Article 33).
- The right to promote, develop and maintain their institutional structures and judicial systems in accordance with international human rights standards (Article 34).
- The right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States (Article 37).